

SENATE BILL 843

F2

2lr1285
CF HB 1223

By: **Senators Pinsky, Ferguson, Madaleno, ~~and Montgomery~~ Montgomery,
and Rosapepe**

Introduced and read first time: February 3, 2012

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2012

CHAPTER _____

1 AN ACT concerning

2 **Institutions of Postsecondary Education – Fully Online Distance Education**
3 **Programs – Registration**

4 FOR the purpose of requiring certain institutions of postsecondary education that
5 enroll certain students in certain online distance education programs to register
6 with the Maryland Higher Education Commission before commencing or
7 continuing to operate, do business, or function in the State within a certain
8 period of time under certain circumstances; prohibiting certain institutions from
9 commencing or continuing to operate, doing business, or functioning in the
10 State; requiring the Commission to give certain institutions certain notice under
11 certain circumstances within a certain period of time; authorizing certain
12 institutions to request a certain hearing under certain circumstances; requiring
13 the Commission to render a certain decision within a certain period of time;
14 providing certain institutions a certain right to judicial review; providing for a
15 certain exception from the requirement for registration; requiring certain
16 institutions to be accredited, submit certain information to the Commission,
17 notify the Commission of certain changes, comply with certain principles of good
18 practice, make public and publish certain information on the institution's Web
19 site, comply with a certain refund policy and procedures, and be subject to
20 certain complaint investigation; requiring the Commission to establish certain
21 refund policies and procedures; requiring the payment of certain fees to be used
22 for certain purposes; requiring the Commission to make public and post on its
23 Web site the names of certain institutions under certain circumstances;
24 requiring the Commission to submit certain reports to the Governor and the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 General Assembly; authorizing the Commission to require certain institutions
 2 to furnish certain bonds or other financial guarantees under certain
 3 circumstances; authorizing the Commission to create a certain guaranty fund;
 4 providing for the use of a certain fund; authorizing certain students to make
 5 certain claims against a certain fund under certain circumstances; requiring
 6 certain institutions to pay a certain fee into a certain fund subject to a certain
 7 ~~exceptions~~ exception; prohibiting the Commission from issuing a certain
 8 registration and requiring the Commission to revoke a certain registration
 9 under certain circumstances; authorizing the Commission to impose a certain
 10 penalty on certain institutions under certain circumstances; requiring the
 11 Commission to deposit certain monetary penalties into a certain fund;
 12 subjecting certain institutions to revocation of registration under certain
 13 circumstances; prohibiting certain institutions from enrolling certain students
 14 under certain circumstances; authorizing certain students to complete certain
 15 online distance education programs under certain circumstances; providing that
 16 certain persons are guilty of a misdemeanor and subject to certain fines and
 17 imprisonment for a certain period of time under certain circumstances;
 18 requiring certain institutions to submit certain data to the Maryland
 19 Longitudinal Data System; providing for the construction of this Act; defining
 20 certain terms; and generally relating to institutions of postsecondary education
 21 that offer fully online distance education programs in the State.

22 BY repealing and reenacting, with amendments,
 23 Article – Education
 24 Section 11–202, 11–203, 11–204, and 24–707
 25 Annotated Code of Maryland
 26 (2008 Replacement Volume and 2011 Supplement)

27 BY adding to
 28 Article – Education
 29 Section 11–202.2
 30 Annotated Code of Maryland
 31 (2008 Replacement Volume and 2011 Supplement)

32 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 33 MARYLAND, That the Laws of Maryland read as follows:

34 **Article – Education**

35 11–202.

36 (a) (1) Except as provided in § 11–202.1 of this subtitle, an institution of
 37 postsecondary education may not commence or continue to operate, do business, or
 38 function without a certificate of approval from the Commission.

39 (2) EXCEPT AS PROVIDED IN § 11–202.2 OF THIS SUBTITLE, AN
 40 INSTITUTION OF POSTSECONDARY EDUCATION THAT ENROLLS MARYLAND

1 STUDENTS IN A FULLY ONLINE DISTANCE EDUCATION PROGRAM IN THE STATE
 2 MAY NOT COMMENCE OR CONTINUE TO OPERATE, DO BUSINESS, OR FUNCTION
 3 WITHOUT REGISTERING WITH THE COMMISSION WITHIN 6 MONTHS OF
 4 ENROLLING THE FIRST MARYLAND STUDENT.

5 (3) EXCEPT AS PROVIDED IN § 11-202.1 OF THIS SUBTITLE, BUT
 6 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN INSTITUTION THAT IS
 7 NOT ACCREDITED BY AN ACCREDITING BODY RECOGNIZED AND APPROVED BY
 8 THE UNITED STATES DEPARTMENT OF EDUCATION MAY NOT COMMENCE OR
 9 CONTINUE TO OPERATE, DO BUSINESS, OR FUNCTION IN THE STATE.

10 (b) The Commission shall issue a certificate of approval to an institution of
 11 postsecondary education if it finds that:

12 (1) The facilities, conditions of entrance and scholarship, and
 13 educational qualifications and standards are adequate and appropriate for:

14 (i) The purposes of the institution; and

15 (ii) The programs, training, and courses to be offered by the
 16 institution; and

17 (2) The proposed programs to be offered by the institution meet the
 18 educational needs of the State.

19 (c) (1) If the Commission believes that an institution of postsecondary
 20 education that applies for a certificate of approval ~~OR REGISTRATION~~ does not meet
 21 the conditions or standards necessary for the issuance of the certificate ~~OR~~
 22 ~~REGISTRATION~~, the Commission shall give the institution written notice of the
 23 specific deficiencies.

24 (2) (I) Within 20 days of receipt of a notice of deficiencies, the
 25 institution may request a hearing before the Commission, ~~and within.~~

26 (II) WITHIN 60 days of receipt of the request the Commission
 27 shall hold a hearing to determine if the certificate of approval ~~OR REGISTRATION~~
 28 should be issued.

29 (3) If, within 6 months from the date on which the application for
 30 certification ~~OR REGISTRATION~~ was submitted to the Commission, the institution has
 31 ~~NOT~~ received ~~[neither]~~ a certificate of approval under subsection (b) of this section ~~OR~~
 32 ~~A REGISTRATION UNDER § 11-202.2 OF THIS SUBTITLE [nor] AND HAS NOT~~
 33 ~~RECEIVED NOR~~ written notice of deficiencies under this subsection, the institution
 34 may request within 20 days a hearing before the Commission to determine if the
 35 certificate of approval ~~OR REGISTRATION~~ should be issued.

1 **(C-1) (1) IF THE COMMISSION BELIEVES THAT AN INSTITUTION OF**
2 **POSTSECONDARY EDUCATION THAT IS REQUIRED TO REGISTER UNDER §**
3 **11-202.2 OF THIS SUBTITLE DOES NOT MEET THE CONDITIONS OR STANDARDS**
4 **NECESSARY FOR THE ISSUANCE OF THE REGISTRATION, THE COMMISSION**
5 **SHALL GIVE THE INSTITUTION WRITTEN NOTICE OF THE SPECIFIC**
6 **DEFICIENCIES WITHIN 6 MONTHS AFTER RECEIPT OF AN APPLICATION FOR**
7 **REGISTRATION.**

8 **(2) (I) WITHIN 20 DAYS AFTER RECEIPT OF A NOTICE OF**
9 **DEFICIENCIES, THE INSTITUTION MAY REQUEST A HEARING BEFORE THE**
10 **COMMISSION.**

11 **(II) WITHIN 60 DAYS AFTER RECEIPT OF THE REQUEST FOR**
12 **A HEARING UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COMMISSION**
13 **SHALL HOLD A HEARING TO DETERMINE IF THE REGISTRATION SHOULD BE**
14 **ISSUED.**

15 **(3) (I) IF, AFTER 6 MONTHS FROM THE DATE ON WHICH THE**
16 **APPLICATION FOR REGISTRATION WAS SUBMITTED TO THE COMMISSION, THE**
17 **INSTITUTION HAS RECEIVED NEITHER A REGISTRATION NOR WRITTEN NOTICE**
18 **OF DEFICIENCIES UNDER THIS SUBSECTION, THE INSTITUTION MAY REQUEST A**
19 **HEARING WITHIN 20 DAYS BEFORE THE COMMISSION.**

20 **(II) WITHIN 60 DAYS AFTER RECEIPT OF THE REQUEST FOR**
21 **A HEARING UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COMMISSION**
22 **SHALL HOLD A HEARING TO DETERMINE IF THE REGISTRATION SHOULD BE**
23 **ISSUED.**

24 **(4) AFTER A HEARING HELD UNDER THIS SUBSECTION, THE**
25 **COMMISSION SHALL RENDER A DECISION WITHIN 30 DAYS.**

26 (d) (1) Any institution of postsecondary education that is denied a
27 certificate of approval ~~OR REGISTRATION~~ by the Commission after a hearing granted
28 under subsection (c) of this section **OR THAT IS DENIED A REGISTRATION AFTER A**
29 **HEARING GRANTED UNDER SUBSECTION (C-1) OF THIS SECTION** has the right to
30 judicial review provided by Title 10, Subtitle 2 of the State Government Article.

31 (2) The decision of the Commission shall be presumed correct, and the
32 institution has the burden of proving otherwise.

33 (3) The Commission shall be a party to the proceeding.

34 **11-202.2.**

1 (A) (1) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE
2 MEANINGS INDICATED.

3 (2) “DISTANCE EDUCATION” MEANS COURSE WORK TAUGHT BY
4 AN INSTITUTION OF POSTSECONDARY EDUCATION THROUGH ELECTRONIC
5 DISTRIBUTION OF INSTRUCTION TO A SITE OTHER THAN THE PRINCIPAL
6 LOCATION OF THE INSTITUTION AND ADVERTISED OR DESCRIBED AS LEADING
7 TO THE FORMAL AWARD OF A CERTIFICATE OR DEGREE.

8 (3) “FULLY ONLINE DISTANCE EDUCATION PROGRAM IN THE
9 STATE” MEANS A PROGRAM IN WHICH:

10 (I) 100% OF THE PROGRAM IS OFFERED THROUGH
11 ELECTRONIC DISTRIBUTION OF INSTRUCTION TO ONE OR MORE SITES OTHER
12 THAN THE PRINCIPAL LOCATION OF AN INSTITUTION; OR

13 (II) 51% OR MORE OF THE PROGRAM IS OFFERED THROUGH
14 ELECTRONIC DISTRIBUTION OF INSTRUCTION TO ONE OR MORE SITES OTHER
15 THAN THE PRINCIPAL LOCATION OF AN INSTITUTION AND ~~NO PORTION OF THE~~
16 ~~PROGRAM IS OFFERED AT A LOCATION IN THE STATE~~ THE COMMISSION HAS
17 DETERMINED THAT THE PORTION OF THE PROGRAM OFFERED AT A LOCATION
18 IN THE STATE, IF ANY, DOES NOT REQUIRE A CERTIFICATE OF APPROVAL FOR
19 THE INSTITUTION TO OPERATE, DO BUSINESS, OR FUNCTION IN THE STATE.

20 (B) (1) EXCEPT AS PROVIDED IN ~~PARAGRAPH (2)~~ PARAGRAPHS (2)
21 AND (3) OF THIS SUBSECTION, AN INSTITUTION OF POSTSECONDARY
22 EDUCATION THAT ENROLLS MARYLAND STUDENTS IN A FULLY ONLINE
23 DISTANCE EDUCATION PROGRAM IN THE STATE SHALL FILE AN APPLICATION
24 TO REGISTER WITH THE COMMISSION WITHIN ~~6~~ 3 MONTHS OF ENROLLMENT.

25 (2) THIS SECTION DOES NOT APPLY TO AN INSTITUTION OF
26 POSTSECONDARY EDUCATION THAT ENROLLS MARYLAND STUDENTS IN A
27 FULLY ONLINE DISTANCE EDUCATION PROGRAM IN THE STATE THAT HAS BEEN
28 APPROVED OR RECEIVED A FAVORABLE RECOMMENDATION BY THE
29 COMMISSION UNDER § 11-206 OR § 11-206.1 OF THIS SUBTITLE.

30 (3) (I) NOTWITHSTANDING THE REQUIREMENTS OF §
31 11-202(C-1) OF THIS SUBTITLE, AN INSTITUTION THAT HAS ENROLLED
32 MARYLAND STUDENTS BEFORE OBTAINING REGISTRATION UNDER THIS
33 SECTION MAY CONTINUE TO OPERATE WITHOUT A REGISTRATION WHILE THE
34 COMMISSION CONSIDERS THE INSTITUTION’S APPLICATION, CONDUCTS A
35 HEARING CONCERNING THE INSTITUTION’S APPLICATION, OR PARTICIPATES IN
36 JUDICIAL REVIEW REGARDING AN INSTITUTION’S APPLICATION.

1 **(II) AN INSTITUTION THAT CONTINUES TO OPERATE**
2 **WITHOUT A REGISTRATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH**
3 **SHALL FURNISH A PERFORMANCE BOND OR OTHER FORM OF FINANCIAL**
4 **GUARANTEE TO THE STATE IN AN AMOUNT SET BY REGULATION THAT IS IN**
5 **ADDITION TO AND SEPARATE FROM A PERFORMANCE BOND OR OTHER FORM OF**
6 **FINANCIAL GUARANTEE REQUIRED UNDER § 11-203 OF THIS SUBTITLE.**

7 **(C) EACH INSTITUTION REQUIRED TO REGISTER UNDER SUBSECTION**
8 **(B) OF THIS SECTION SHALL:**

9 **(1) BE ACCREDITED BY AN ACCREDITING BODY RECOGNIZED AND**
10 **APPROVED BY THE UNITED STATES DEPARTMENT OF EDUCATION;**

11 **(2) SUBMIT TO THE COMMISSION:**

12 **(I) EVERY 2 YEARS, A FINANCIAL STATEMENT REVIEWED**
13 **BY AN INDEPENDENT ACCOUNTANT RETAINED BY THE INSTITUTION;**

14 **(II) AN AFFIDAVIT FROM THE PRESIDENT OR CHIEF**
15 **EXECUTIVE OFFICER OF THE INSTITUTION AFFIRMING:**

16 **1. THAT THE INSTITUTION HAS NOT FILED FOR**
17 **BANKRUPTCY PROTECTION UNDER TITLE 11 OF THE UNITED STATES CODE**
18 **DURING ITS EXISTENCE; AND**

19 **2. THE WILLINGNESS OF THE PRESIDENT OR THE**
20 **CHIEF EXECUTIVE OFFICER TO ABIDE BY THE PROVISIONS OF THIS SECTION;**

21 **(III) PROOF OF GOOD BUSINESS STANDING IN THE STATE IN**
22 **WHICH THE CENTRAL ADMINISTRATION OF THE INSTITUTION IS**
23 **INCORPORATED; AND**

24 **(IV) PROOF OF GOOD ACADEMIC STANDING SUBMITTED BY:**

25 **1. THE REGULATORY HIGHER EDUCATION ENTITY IN**
26 **THE STATE IN WHICH THE CENTRAL ADMINISTRATION OF THE INSTITUTION IS**
27 **LOCATED; OR**

28 **2. IF THE STATE IN WHICH THE INSTITUTION IS**
29 **LOCATED DOES NOT HAVE A REGULATORY HIGHER EDUCATION ENTITY, THE**
30 **ACCREDITING BODY THAT ACCREDITED THE INSTITUTION;**

31 **(3) PROMPTLY NOTIFY THE COMMISSION OF A CHANGE IN**
32 **OWNERSHIP OR A CHANGE IN MAJORITY CONTROL;**

1 (4) COMPLY WITH THE PRINCIPLES OF GOOD PRACTICE FOR
2 DISTANCE EDUCATION ESTABLISHED BY THE COMMISSION THROUGH
3 REGULATION;

4 (5) MAKE PUBLIC AND POST ON THE INSTITUTION'S WEB SITE:

5 (I) WHETHER THE INSTITUTION IS REGISTERED IN
6 MARYLAND; AND

7 (II) THE PROCESS BY WHICH TO MAKE COMPLAINTS
8 AGAINST THE INSTITUTION;

9 (6) COMPLY WITH THE REFUND POLICY AND PROCEDURES
10 ESTABLISHED BY THE COMMISSION; AND

11 (7) BE SUBJECT TO COMPLAINT INVESTIGATION BY THE OFFICE
12 OF THE ATTORNEY GENERAL OR THE COMMISSION OR BOTH.

13 (D) THE REFUND POLICY AND PROCEDURES ESTABLISHED BY THE
14 COMMISSION SHALL ALLOW FOR:

15 (1) (I) AT LEAST 2 WEEKS OF REQUIRED ORIENTATION OR
16 PREENROLLMENT INSTRUCTION IN A FULLY ONLINE DISTANCE EDUCATION
17 PROGRAM IN THE STATE AT NO CHARGE FOR A STUDENT WHO HAS COMPLETED
18 LESS THAN 24 CREDITS OF COLLEGE-LEVEL LEARNING FROM AN ACCREDITED
19 INSTITUTION; AND

20 (II) A PRORATED REFUND METHODOLOGY THAT PROVIDES
21 A REFUND TO ANY STUDENT NOT COVERED BY ITEM (I) OF THIS PARAGRAPH
22 WHO HAS COMPLETED 60% OR LESS OF A COURSE; OR

23 (2) A PRORATED REFUND METHODOLOGY THAT ~~ACCOUNTS FOR~~
24 ~~THE PORTION OF THE COURSE NOT COMPLETED~~ PROVIDES A REFUND TO ANY
25 STUDENT WHO HAS COMPLETED 60% OR LESS OF A COURSE.

26 (E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE
27 COMMISSION SHALL REQUIRE THE PAYMENT OF A FEE SET BY REGULATION, AS
28 A CONDITION OF REGISTRATION.

29 (2) THE FEES CHARGED SHALL BE:

30 (I) A FIXED AMOUNT FOR ALL INSTITUTIONS REGARDLESS
31 OF TYPE, LOCATION, OR STUDENT ENROLLMENT; AND

1 **(II) ~~SET~~ SET TO COVER THE APPROXIMATE COST OF**
 2 **IMPLEMENTING A SYSTEM OF REGISTRATION.**

3 **(F) THE COMMISSION SHALL MAKE PUBLIC AND POST ON ITS WEB SITE:**

4 **(1) A LIST OF REGISTERED INSTITUTIONS OF POSTSECONDARY**
 5 **EDUCATION THAT OFFER FULLY ONLINE DISTANCE EDUCATION PROGRAMS IN**
 6 **THE STATE; AND**

7 **(2) IF THE COMMISSION DENIES OR REVOKES THE REGISTRATION**
 8 **OF AN INSTITUTION, THE NAME OF THE DENIED OR REVOKED INSTITUTION.**

9 **(G) ON OR BEFORE DECEMBER 1 EACH YEAR, THE COMMISSION SHALL**
 10 **REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE**
 11 **STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY:**

12 **(1) THE NUMBER OF INSTITUTIONS OF POSTSECONDARY**
 13 **EDUCATION THAT APPLY FOR REGISTRATION UNDER THIS SECTION;**

14 **(2) THE TYPE AND SIZE OF THE INSTITUTIONS THAT APPLY;**

15 **(3) THE NUMBER OF INSTITUTIONS APPROVED FOR**
 16 **REGISTRATION;**

17 **(4) THE NUMBER OF INSTITUTIONS DENIED REGISTRATION; AND**

18 **(5) THE NUMBER OF MARYLAND STUDENTS ENROLLED IN**
 19 **INSTITUTIONS REQUIRED TO REGISTER UNDER THIS SECTION.**

20 11-203.

21 (a) The Commission may require any institution of postsecondary education
 22 that is required to obtain a certificate of approval **OR REQUIRED TO REGISTER**
 23 **UNDER § 11-202.2 OF THIS SUBTITLE** to furnish a performance bond or other form
 24 of financial guarantee to the State conditioned that the institution will:

25 (1) Perform faithfully all agreements or contracts it makes with its
 26 students; and

27 (2) Comply with this article.

28 (b) Subject to subsection (d)(3)(ii)2 of this section, any bond or guarantee
 29 required under this section shall be in the form and amount the Secretary requires.

1 (c) (1) The total liability of a surety on a bond or guarantee under this
2 section may not exceed the amount of the bond or guarantee.

3 (2) If the total amount of claims filed against a bond or guarantee
4 exceeds the amount of the bond or guarantee, the surety shall pay the amount of the
5 bond or guarantee to the Secretary for distribution to the claimants.

6 (d) (1) By rule and regulation, the Commission may create and provide for
7 the operation of [two] **THREE** separate guaranty funds for:

8 (i) For-profit institutions of higher education; [and]

9 (ii) Private career schools; **AND**

10 **(III) INSTITUTIONS OF POSTSECONDARY EDUCATION THAT**
11 **ARE REQUIRED TO REGISTER UNDER § 11-202.2 OF THIS SUBTITLE.**

12 (2) (i) The private career school fund shall be used:

13 1. To reimburse any student at a private career school
14 who is entitled to a refund of tuition and fees because the institution has failed to
15 perform faithfully any agreement or contract with the student or failed to comply with
16 any provision of this article; or

17 2. For any other function directly related to the original
18 purpose of the fund deemed appropriate by the Secretary.

19 (ii) The for-profit institution of higher education fund shall be
20 used to reimburse any student at a for-profit institution of higher education who is
21 entitled to a refund of tuition and fees because the institution has failed to perform
22 faithfully any agreement or contract with the student or failed to comply with any
23 provision of this article.

24 **(III) 1. THE FUND FOR INSTITUTIONS OF**
25 **POSTSECONDARY EDUCATION THAT ARE REQUIRED TO REGISTER UNDER §**
26 **11-202.2 OF THIS SUBTITLE SHALL BE USED TO REIMBURSE ANY STUDENT AT**
27 **ANY OF THESE INSTITUTIONS WHO IS ENTITLED TO A REFUND OF TUITION AND**
28 **FEES BECAUSE THE INSTITUTION HAS FAILED TO PERFORM FAITHFULLY ANY**
29 **AGREEMENT OR CONTRACT WITH THE STUDENT OR FAILED TO COMPLY WITH**
30 **ANY PROVISION OF THIS ARTICLE.**

31 ~~2. THE COMMISSION MAY REDUCE THE~~
32 ~~CONTRIBUTION OF OR EXEMPT AN INSTITUTION FROM THE REQUIREMENT TO~~
33 ~~CONTRIBUTE TO THE FUND AFTER A PERIOD OF TIME SET BY REGULATION~~
34 ~~DURING WHICH NO CLAIM AGAINST THE FUND HAS BEEN SUSTAINED ON BEHALF~~

~~1 OF A STUDENT PARTICIPATING IN A FULLY ONLINE DISTANCE EDUCATION
2 PROGRAM OFFERED IN THE STATE BY THE INSTITUTION.~~

3 2. A. AFTER 3 YEARS OF CLAIMS HISTORY
4 DURING WHICH NO CLAIM AGAINST THE FUND HAS BEEN SUSTAINED ON BEHALF
5 OF A STUDENT PARTICIPATING IN A FULLY ONLINE DISTANCE EDUCATION
6 PROGRAM OFFERED IN THE STATE BY AN INSTITUTION REGISTERED UNDER §
7 11-202.2 OF THIS SUBTITLE, THE COMMISSION SHALL EXEMPT THAT
8 INSTITUTION FROM THE REQUIREMENT TO CONTRIBUTE TO THE FUND.

9 B. NOTWITHSTANDING SUBSUBSUBPARAGRAPH A
10 OF THIS SUBSUBPARAGRAPH, AN INSTITUTION SHALL BE REQUIRED TO
11 CONTRIBUTE TO THE FUND FOLLOWING A CLAIM AGAINST THE FUND BEING
12 SUSTAINED ON BEHALF OF A STUDENT PARTICIPATING IN A FULLY ONLINE
13 DISTANCE EDUCATION PROGRAM OFFERED IN THE STATE BY THE INSTITUTION.

14 3. NOTWITHSTANDING SUBSUBPARAGRAPH 2 OF
15 THIS SUBPARAGRAPH, A STUDENT WHO TAKES COURSES FROM AN INSTITUTION
16 EXEMPTED FROM CONTRIBUTION TO THE FUND UNDER SUBSUBPARAGRAPH 2
17 OF THIS SUBPARAGRAPH MAY MAKE A CLAIM AGAINST THE FUND IN
18 ACCORDANCE WITH SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH.

19 [(iii)] (IV) 1. The funds shall be continuing, nonlapsing
20 funds, not subject to § 7-302 of the State Finance and Procurement Article.

21 2. Any unspent portions of the funds may not be
22 transferred or revert to the General Fund of the State, but shall remain in the funds to
23 be used for the purposes specified in this subsection.

24 3. No other State money may be used to support the
25 funds.

26 [(iv)] (V) The Commission shall be subrogated to and may
27 enforce the claim of any student to the extent of any actual or authorized
28 reimbursement from the funds.

29 (3) (i) Each for-profit institution of higher education or private
30 career school that is required to obtain a certificate of approval AND, SUBJECT TO
31 PARAGRAPH (2)(III)2 OF THIS SUBSECTION, EACH INSTITUTION OF
32 POSTSECONDARY EDUCATION REQUIRED TO REGISTER UNDER § 11-202.2 OF
33 THIS SUBTITLE shall pay an annual fee into the appropriate fund.

34 (ii) 1. Subject to subparagraph 2 of this subparagraph,
35 the Commission shall determine the amount of the fee based on the probable amount
36 of money needed for the funds for each fiscal year. If the moneys in the guaranty funds

1 are insufficient to satisfy duly authorized claims, the participating institutions may be
2 reassessed and shall pay the additional amounts required.

3 2. The amount of the annual fee charged to a for-profit
4 institution of higher education may not exceed 0.0025 of all gross tuition, or \$30,000,
5 whichever is less.

6 (iii) The Commission may not issue a certificate of approval **OR**
7 **REGISTRATION** to, and shall revoke any certificate of approval **OR REGISTRATION**
8 previously issued to, an institution that fails to pay any annual fee or reassessment.

9 (iv) The Commission shall deposit into the appropriate fund any
10 penalty assessed against a for-profit institution of higher education, **INSTITUTION OF**
11 **POSTSECONDARY EDUCATION REQUIRED TO REGISTER UNDER § 11-202.2 OF**
12 **THIS SUBTITLE**, or private career school, respectively, under the terms of § 11-204 of
13 this subtitle.

14 (4) (i) The funds shall be maintained by the State Comptroller who
15 may deposit the assets of the funds in any manner that is consistent with the purposes
16 of the funds.

17 (ii) All interest or other return on fund investments shall be
18 credited to the funds.

19 (5) The Commission, through the Attorney General, may enforce any
20 claim to which the Commission has been subrogated under this subsection.

21 **(E) ON OR BEFORE DECEMBER 1 EACH YEAR, THE COMMISSION SHALL**
22 **REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE**
23 **STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY, REGARDING:**

24 **(1) THE NUMBER OF CLAIMS MADE AGAINST EACH GUARANTY**
25 **FUND ESTABLISHED UNDER THIS SECTION;**

26 **(2) THE TYPE, SIZE, AND PROGRAM OF THE INSTITUTIONS**
27 **AGAINST WHICH THE CLAIMS ARE MADE;**

28 **(3) THE NUMBER OF CLAIMS THAT ARE APPROVED AND THE**
29 **ASSOCIATED PAYOUTS FROM THE FUNDS; AND**

30 **(4) THE NUMBER OF CLAIMS THAT ARE DENIED.**

31 11-204.

32 (a) If the Commission believes that an institution of postsecondary education
33 does not meet the conditions or standards on which its certificate of approval,

1 **REGISTRATION**, or any other approval issued by the Commission or Secretary, was
2 based, the Commission shall give the institution written notice specifying the
3 deficiencies believed to exist.

4 (b) (1) The notice shall specify the alleged deficiencies, and direct the
5 institution to correct them within a period of not less than 30 days.

6 (2) If the institution requests a hearing, the Commission shall hold a
7 hearing on the matter within 60 days of receipt of the request, subject to the
8 requirement that any request for a hearing must be received by the Commission
9 within 20 days of the institution's receipt of the notice of deficiencies.

10 (3) Subject to subsection (f) of this section, action on the notice of
11 deficiencies shall be stayed until a determination is made after the hearing.

12 (4) Notwithstanding § 11-206(b)(3) of this subtitle, at the discretion of
13 the Secretary, action on any approval request by an institution issued a notice of
14 deficiencies may be stayed until a determination is made after the hearing.

15 (c) (1) If a hearing is not requested within the specified time period, or if
16 the notice of deficiencies is upheld in whole or in part after a hearing, the Commission
17 may reprimand the institution or suspend or revoke the institution's certificate of
18 approval or any other approval issued by the Commission or Secretary.

19 (2) (i) Instead of or in addition to reprimanding a for-profit
20 institution of higher education, **INSTITUTION OF POSTSECONDARY EDUCATION**
21 **REQUIRED TO REGISTER UNDER § 11-202.2 OF THIS SUBTITLE**, or private career
22 school, or suspending or revoking any approval issued to a for-profit institution of
23 higher education or private career school **OR REGISTRATION ISSUED TO AN**
24 **INSTITUTION OF POSTSECONDARY EDUCATION UNDER § 11-202.2 OF THIS**
25 **SUBTITLE**, the Commission may impose a penalty of up to \$5,000 for each violation as
26 specified in regulations adopted by the Commission.

27 (ii) In accordance with the provisions of this section, the
28 Commission shall deposit any penalty assessed against a for-profit institution of
29 higher education, **INSTITUTION OF POSTSECONDARY EDUCATION REQUIRED TO**
30 **REGISTER UNDER § 11-202.2 OF THIS SUBTITLE**, or private career school into the
31 **RESPECTIVE** guaranty fund [for for-profit institutions of higher education or for
32 private career schools] if such funds exist. Otherwise, all penalties shall be deposited
33 into the General Fund of the State.

34 **(D) (1) IN ADDITION TO ANY OTHER SANCTION IMPOSED UNDER THIS**
35 **SECTION, AN INSTITUTION OF POSTSECONDARY EDUCATION THAT IS REQUIRED**
36 **TO REGISTER UNDER § 11-202.2 OF THIS SUBTITLE THAT WILLFULLY AND**
37 **KNOWINGLY VIOLATES THE PROVISIONS OF THIS SUBTITLE SHALL BE:**

1 **(I) SUBJECT TO REVOCATION OF REGISTRATION; AND**

2 **(II) PROHIBITED FROM ENROLLING MARYLAND STUDENTS**
3 **IN FULLY ONLINE DISTANCE EDUCATION PROGRAMS IN THE STATE.**

4 **(2) MARYLAND STUDENTS WHO ATTEND AN INSTITUTION**
5 **PROHIBITED FROM ENROLLING MARYLAND STUDENTS UNDER PARAGRAPH**
6 **(1)(II) OF THIS SUBSECTION SHALL BE ALLOWED TO COMPLETE A FULLY ONLINE**
7 **DISTANCE EDUCATION PROGRAM IN THE STATE THAT IS IN PROGRESS.**

8 **(3) IF AN INSTITUTION IS REQUIRED TO REGISTER UNDER §**
9 **11-202.2 OF THIS SUBTITLE AND THE INSTITUTION DOES NOT REGISTER WITH**
10 **THE COMMISSION WITHIN 6 MONTHS OF ENROLLING ITS FIRST MARYLAND**
11 **STUDENT OR THE INSTITUTION ENROLLS ADDITIONAL MARYLAND STUDENTS IN**
12 **VIOLATION OF THIS SECTION, THE PERSON WHO SUBMITS THE AFFIDAVIT**
13 **REQUIRED UNDER § 11-202.2(C)(2)(II) OF THIS SUBTITLE IS GUILTY OF A**
14 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING**
15 **\$10,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.**

16 **[(d)] (E)** In imposing any sanctions under this section, the Commission
17 shall consider:

- 18 (1) The seriousness of the deficiency;
- 19 (2) The harm caused by the deficiency;
- 20 (3) The good faith of the institution and any corrective actions taken;
- 21 (4) Any history of previous deficiencies; and
- 22 (5) Other pertinent circumstances.

23 **[(e)] (F)** (1) An institution that is aggrieved by an order of the
24 Commission has the right to judicial review provided by Title 10, Subtitle 2 of the
25 State Government Article.

26 (2) The decision of the Commission shall be presumed correct and the
27 institution has the burden of proving otherwise.

28 (3) The Commission shall be a party to the proceeding.

29 **[(f)] (G)** (1) The Secretary may at any time following written notice of
30 the deficiencies and prior to the Commission's final decision seek an injunction or
31 other judicial remedy in accordance with § 11-107 of this title, if the Secretary

1 determines that the public interest requires enforcement of the provisions of this
2 article or any applicable regulations.

3 (2) If a court grants relief prior to a hearing that was requested on a
4 timely basis, the Commission shall schedule a hearing in regard to the notice of
5 deficiencies within 2 weeks of the issuance of the court's order, unless the institution
6 requests a delay.

7 24-707.

8 (a) Local education agencies, community colleges, public senior higher
9 education institutions, and State agencies shall:

10 (1) Make every effort to comply with the data requirements and
11 implementation schedule for the Maryland Longitudinal Data System as set forth by
12 the Governing Board; and

13 (2) Transfer [student] **STUDENT-LEVEL AND TRANSCRIPT-LEVEL**
14 data and workforce data to the Maryland Longitudinal Data System in accordance
15 with the data security and safeguarding plan developed under § 24-704(g)(6) of this
16 subtitle.

17 (b) Private secondary schools may transfer student data and workforce data
18 to the Maryland Longitudinal Data System in accordance with the data security and
19 safeguarding plan developed under § 24-704(g)(6) of this subtitle.

20 (c) For-profit and private nonprofit institutions of higher education, **AND**
21 **INSTITUTIONS OF POSTSECONDARY EDUCATION THAT ARE REQUIRED TO**
22 **REGISTER UNDER § 11-202.2 OF THIS ARTICLE** shall transfer student-level ~~AND~~
23 ~~TRANSCRIPT-LEVEL~~ enrollment data, degree data, and financial aid data for all
24 Maryland residents to the Maryland Longitudinal Data System in accordance with the
25 data security and safeguarding plan developed under § 24-704(g)(6) of this subtitle.

26 SECTION 2. AND BE IT FURTHER ENACTED, That nothing in this Act may
27 be construed to affect the ongoing interpretation of § 11-202 of the Education Article
28 and whether instruction through correspondence, noninteractive learning, credit for
29 prior learning, cooperative education activities, practica, internships, externships,
30 apprenticeships, portfolio review, departmental examinations, or challenge
31 examinations requires a certificate of approval to operate, do business, or function in
32 this State.

33 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
34 effect July 1, 2012.